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MARKETING OF AGRICULTURAL LANDS IN MINNESOTA AND NORTH DAKOTA

A question of very great economic importance to all persons interested in the institution of private property, and yet probably as little studied as any, is that of buying and selling land. Methods of transferring landed property in densely populated centers have been considered to some extent, including the significance of building and loan¹ associations and other institutions of like nature or having like purposes in view; but it would seem as if less attention had been given (at least in this country) to a consideration of methods of transferring agricultural lands than to any other phase of the land question. Land laws receive their share of attention to be sure, and the various forms of recording and registering titles have not been left unconsidered; the actual working of these laws, however, is little understood by the mass of people and receives only legal attention, except in cases where the individual is unwillingly called to a consideration of them. Notwithstanding the great mass of land laws, the growing quantity of statutes and court decisions, and the appearance of increasing technical difficulties, there exists in this country great freedom in the acquisition and transfer of landed property. Joseph Kay pointed out not less than seventeen distinct evil consequences of the laws existing in England,² which he traced to an infringement of the right of free trade in land. And John Bright in speaking of Kay's work says: "He would leave to their free action the natural forces which tend to the accumulation of landed property on the one hand, as well as those which tend to its dispersion on the other. . . ."³ The thing for which Kay contended is largely a recognized fact in this country and no legal obstacles to free dealing in land will be considered in this paper. Where few, if any, obstacles exist to free trade in land, that is, where law in no way hinders the development of new methods of dealing in landed property, those forms will develop, which best serve the wants of the people. This being so we may expect to find a great variety of methods in different districts; and even in any one locality a variety of forms may be in use to serve the varying demands of the people.

¹ See Hamilton, *Saving Institutions*.

² Joseph Kay, *Free Trade in Land*.

³ *Ibid.*, Preface (written after Kay's death).

It is the purpose of this paper to review, as briefly as possible and yet considering the more important forms, the methods of transferring land in the Red River Valley of the North, which lies in Minnesota and North Dakota. In this connection we might quickly review the fact that this area is a very level district, chiefly devoted to cereal farming, and recognized the world over as a great wheat country. After some years of negotiations, the land was secured from the Indians⁴ and opened to settlement; surveyors were put in the field just before the decade beginning with 1870. This area had long been a favorite field for fur-traders, explorers, missionaries, and adventurers. Incoming farmers now rapidly displaced the half-breed Indians who had been the chief occupants, and at this point came the first step in the transition of the land from free to economic goods. Within a few years the title to almost every available acre had passed over to the national government.⁵

This preliminary occupation of land has been the theme of many writers and will not be dwelt upon here. Suffice it to say that the state got its share as state lands, the schools their share as school lands, and the railroads their extensive grants as a bonus for pushing forward into this country which otherwise might still have been a wilderness. After lands for these purposes had been withdrawn, the remaining area was declared open to individual settlers. Some was sold to individuals, but the greater bulk was gotten in the more usual way,⁶ under the homestead and pre-emption laws. It was during this decade (1870-80) that the "timber" or "tree" claim act was passed⁷ and developed into workable form, and great numbers of settlers took advantage of its provisions in order to become owners of land.

At the outset we may well give some attention to the methods of transfer where the state or the schools—that is, society—is the vendor and some private individual is the vendee. We must note at this point that the Red River is the boundary line of two states; and therefore it will be necessary to examine the procedure of each state and compare the two systems.

Policy of North Dakota. The problem of North Dakota upon

⁴ See *Indian Treaties and Conventions*.

⁵ *Land Office Reports*.

⁶ Thomas Donaldson, *Public Domain*.

⁷ *Ibid.* (ed. of 1884), pp. 360-362.

attaining statehood was to care for or dispose of over 3,000,000 acres of land entrusted to her for the use of various institutions. That she has done well will be clear from a brief examination of her land policy. Article IX, of the state constitution pertains to School and Public Lands. It is provided in section 155 as follows:

Sec. 155.⁸ After one year from the assembling of the first legislative assembly, the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions, and no other: No more than one fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one half of the remainder within two years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the state shall never be sold, but the legislative assembly may by general laws provide for leasing of the same.

None of the coal lands referred to are in the Red River Valley and, therefore, any or all of the lands in that section might be sold. The business of selling and otherwise handling these immense tracts of land devolves upon the state land department created by law for that purpose and acting under specific laws.⁹

Before sale the state board orders an appraisal by county officials. It is made by personal inspection and the return must be approved by the board. A commissioner selects such lands as are deemed saleable and advertises the list for sixty days in a newspaper in the county where the lands are located, giving notice of sale, etc. No land is advertised until it has been appraised at \$10 per acre, at least, and no land can be sold for less than its appraised value. On the day of sale each tract is sold at public auction to the highest bidder. A payment of one fifth in cash must be made at the time of sale, the balance being payable in instalments in 5, 10, 15, and 20 years. The deferred payments bear 6 per cent interest, payable in advance. A fee of \$5 is charged for each contract issued. Not more than 160 acres are included in a single sale.

Public sales are held only in such counties and at such times as it is thought that a sufficient quantity of land will be sold to warrant the expense of holding a sale, and such sales are authorized

⁸ W. L. Stockwell, *General School Laws of North Dakota* (1905).

⁹ O. I. Hegge, *Capitol Lands* (pamphlet, 1905).

by the Board of University and School Lands. All sales, as a rule, are held in the fall and winter after the crops have been harvested and when the farmers are best prepared to purchase.¹⁰ The objection that they cannot see the land or know what they are buying cannot be raised here because practically all of the land is sold to farmers who live close to the land and are well acquainted with the conditions.

Persons desiring to have any particular tract of state land offered for sale may make application to the land commissioner.¹¹ If it is not too late in the year, provided the land has been appraised at not less than the minimum of \$10 per acre, and if the land is not held under lease, the application will be considered. Lessees who desire to have the land which they hold under lease, offered for sale, may surrender their duplicate lease for cancellation and then their application will be considered.¹²

No sale is conducted unless it seems that the demand is sufficient to warrant the belief that there will be considerable competition and not unless there are several pieces of land for sale in a district. No land is sold privately, and the only way to buy state land is to attend the regular public sales and bid in the required tracts.

Under these general provisions almost all of the land in the Red River Valley on the North Dakota side of the river, has been sold.¹³ The state and the person who purchases the land are equally and fairly protected by the contract.¹⁴

¹⁰ This is true in the Red River Valley, but not always the case in the other parts of the state.

¹¹ O. I. Hegge, *Capitol Lands*, p. 6.

¹² *Ibid.*

¹³ *Biennial Reports of Land Commissioners.*

¹⁴ After describing the land and stating the consideration in terms of money, the contract reads: Now therefore, if the said purchaser, h. . heirs, assigns or other legal representatives, shall pay or cause to be paid to the County Treasurer of said county, or other officer legally authorized to receive such payments, the amount of the purchase money as herein provided, and at the time and in the manner herein provided, and in accordance with law, and interest annually in advance, on the 1st day of January in each and every year, at the rate of six per cent per annum on all deferred payments, and shall pay to the proper officer all taxes upon said land and appurtenances thereto belonging, as the same may become due, and in the manner provided by law, then, and in that event only, will the said purchases, h. . heirs and assigns, or other legal representatives be entitled to a PATENT for the land herein described. But in case of the non-payment into the County Treasury of the pur-

Policy of Minnesota. With slight changes, the policy of Minnesota is much the same as the system already described, of appraising, offering for sale and granting title. Aside from some minor differences,¹⁵ the contract contains the following sections

chase price aforesaid as it shall become due, or of the interest thereon, by the first day of January, or within thirty days thereafter, in each and every year, then this contract shall become voidable at the option of the State of North Dakota, through the Board of University and School Lands, and in case of non-payment of any taxes aforesaid by the said purchaser, or by the person claiming under him, then this contract from the time of said failure shall be utterly void and of no effect, and the State of North Dakota, through the Board of University and School Lands, may take possession of said land and the appurtenances thereunto belonging, and resell the same. Provided however, that right of way over the above described premises is hereby reserved for ditches, or canals and for tunnels, tramways, and telephone and electrical transmission lines, constructed by authority of the United States Government, as provided in Section 60 of the Irrigation Code of the State of North Dakota. This contract may be assigned by the said purchaser, to any other person, by and with the consent of the Board of University and School Lands. It is especially stipulated and covenanted on the part of the purchaser mentioned in this contract, and his heirs and assigns, that if the hereinbefore land shall, during the life of this contract, and before the issuance of patent therefor, be found to be "Coal Lands," or that the same have been sold in violation of any of the provisions of Section 155 of the Constitution of the State of North Dakota, then, and in that case the said lands shall immediately, upon the happening of either such events revert to the State, and this contract shall at once become null and void. Provided, however, that the purchaser shall have the right to have refunded to him all the money he has paid on this contract, less a reasonable rental for said land during the time he has occupied the same, and he shall be permitted, at his own expense, to remove any buildings he has placed thereon.

¹⁵ After a description of the lands included, and a statement of the consideration, a clause embodying the provision of Section 2483 of the Revised Laws for 1905 is included "reserving to the State of Minnesota all minerals, and mineral rights in said land." Then comes the following provision: "Now if the said purchaser, his heirs, assigns, or other legal representatives shall comply with the provisions of Chapter 299 of the Laws of 1905, and shall pay to the County Treasurer the further sum of Dollars, being the amount unpaid of the purchase money, in one or more installments, at any time within forty years from date of said sale, and also the interest annually, in advance, on the first day of June in each and every year, at the rate of four per cent per annum, on said unpaid amount, provided, however, that if the principal or any or any part thereof shall be paid before ten years from date of said sale, the interest on the amount so paid shall be five per cent per annum from the date of said sale to the first day of June next after such payment; and said purchaser shall also pay to the proper officer all Taxes which may be levied upon

which are the special features of Chapter 299 of the laws of 1905, designed to prevent speculation and to encourage settlement. These read as follows:

Section 1. Hereafter whenever any lands granted to the state by the congress of the United States shall be sold by this state, the purchaser shall in the first instance, be given a contract or certificate of sale, which instrument shall contain, among other things, the provisions herein set forth.

Sec. 2. The state auditor shall insert in every such contract or certificate of sale, a clause providing that the vendee, his heirs, administrators or assigns, shall within five years from the date of such instrument, perform at least one of the following requirements:

1. Fence at least twenty five (25) per cent of said tract for pasture and convert such portion into pasture land.
2. Cultivate at least five (5) per cent of said tract, or,
3. Build a house and actually reside upon said tract for a period of twelve (12) months.

Sec. 3. Within five (5) years after the date of such contract or certificate of sale, the vendee, his heirs, administrators or assigns, shall furnish to the state auditor, satisfactory proof that at least one of the said provisions has been complied with, said proof shall be attested by two members of the school board in the district wherein the land is located. And upon such proof, and the fulfillment of all the conditions of such contract or certificate of sale, a deed shall issue to the purchaser, his heirs or assigns, to the land in such contract or certificate described.

Sec. 4. Upon failure to make and furnish the proof mentioned, in the foregoing section, within five (5) years after the date of such contract or certificate, the state auditor shall cancel said contract or certificate and the land covered thereby shall revert to and become the property of the state, free and clear of any incumbrances or cloud arising out of said transaction or contract or attempted to be contracted by said vendee, and all moneys paid on account of the purchase price, shall be forfeited to the state.

said lot as the same shall become due; then, and in that event only, will the said purchaser, his heirs, assigns, or other legal representatives, be entitled to a PATENT for the land herein described. But in the case of the failure of the purchaser, his heirs, or assigns, to comply with at least one of the provisions of Chapter 299 of the Laws of 1905, or the non-payment into the County Treasury of the purchase money aforesaid, as it shall become due, or of the interest thereon, by the first day of June or within six days thereafter, in each and every year, and in case of the non-payment of any taxes aforesaid by the said purchaser or any person claiming under him, then this Certificate, from the time of such failure, SHALL BE UTTERLY VOID AND OF NO EFFECT, and the Auditor may take possession of said land and re-sell the same, as provided in Section 2421, of the Revised Laws for 1905."

Sec. 5. Not more than three hundred and twenty (320) acres of such land shall be sold or contracted to be sold to any one purchaser.¹⁶

Two particular points of difference between the procedure of these states are to be noted. The North Dakota law provides that one fifth of the purchase price shall be paid at the time of the purchase, one fifth in five years, one fifth in ten years, one fifth in fifteen years, and one fifth in twenty years, with interest on deferred payments at the rate of six per cent.¹⁷ In Minnesota the rate of interest over a long period is four per cent, and the entire amount may be settled at any time before ten years in that state by tendering the amount due and paying interest from the date of sale at the rate of five per cent.¹⁸ Attempts have been made in North Dakota to provide for a like method of settlement, but without success.¹⁹

A second difference in the Minnesota requirements is that the land be immediately occupied or used as seen in Section 2 of the law quoted above. The purpose of this law is to encourage actual settlement and discourage speculation.

Dealing in farm land by railroad companies. Roughly speaking the Northern Pacific and the St. Vincent Branch of the St. Paul and Pacific (now Great Northern) railroads were granted a million and a half acres of land in the Red River Valley.²⁰ To illustrate we may quote as follows:

The charter grants the Company (Northern Pacific Railway Co.) 20 alternate sections of public land (640 acres to the section) on each side of the line of the road in the territories, and 10 alternate sections on each side of the line in the states, through which it runs. This is equivalent to 25,600 acres per mile through the territories, and 12,800 acres per mile through the states.²¹

These roads receiving grants used the land as security, and thus were able to begin operations and carry them on with greater rapidity than would otherwise have been possible. The great bulk of the lands owned in the Red River Valley has since been sold, but even at present we find several thousand acres offered for

¹⁶ This law is a new one and has only been in force since 1905.

¹⁷ Provided by state law.

¹⁸ See contract cited above.

¹⁹ The question receives attention at practically every legislative session.

²⁰ See Donaldson, *Public Domain*.

²¹ From *Prospectus* issued by Jay Cooke & Co., financial agents, 1872.

sale. When all of the property of the Northern Pacific road was mortgaged to secure funds for the construction of the road, 7-30 bonds were issued and provision was made that any lands of the road could be sold and paid for in the bonds issued. No lands were to be sold for a lower price than \$2.50 per acre, the double minimum charged by the national government for all land of certain descriptions.

"The bonds of the company, based upon this grant of lands of forty seven million acres, were placed upon the market under more favorable circumstances than ever before attended the sale of railroad securities. The prospect of an early completion of so important a road gave great currency to the bonds, and \$29,119,400 of them, bearing interest at the rate of 7.3 per cent, were negotiated. These securities were sought after by trust companies, guardians, and trustees throughout the whole country. People residing in nearly all the states of the Union, north and south, east and west, invested their money in these bonds.

"Owing to the fact that the holders of the bonds could at any time exchange and use them as money for lands within the grant, large numbers invested their savings of a few hundred dollars in these bonds with the intention of locating lands as soon as the road was built to accessible points, and in this way large numbers of poor men became interested in this road."²²

We need not here review the financial conditions in the United States during this period, but it will be necessary to refer to the crisis of 1873, a time when the Red River Valley was being poured full of settlers, the railroads were being rapidly built and "a great boom was on." It was at this time that the crash came. Jay Cooke's failure precipitated the failure of the Northern Pacific railroad. Its preferred stock, which had been worth 80 cents, went down to 8 cents, and many holders of this stock, rather than sacrifice it in that way concluded to investigate the Red River Valley, since the preferred stock, like the bonds, could be used in the purchase of these lands along the road. At first there were statements circulated which discouraged many from accepting this land, but by 1874-75 there had been many thousands of acres taken up. If a \$100 bond was bought for \$8, and 40 acres of land could be obtained for the bond, purchasers could get 40 acres at \$8, or could purchase land at 20 cents an acre.

Thus Mr. Dalrymple whose descendants still own and operate 15,000 acres said: "My land was purchased at from forty to sixty cents an acre. It immediately took on a value of \$5 an acre in

²² Remarks of Hon. Lucien B. Caswell, on the bill to renew a grant of lands to the Northern Pacific Railway Co., June 8, 1878.

1875.”²³ The above statement applies in a general way to thousands of acres of land. “The Hillsboro farm of 40,000 acres was purchased by N. P. stock purchased in the open market and cost about 40 cents per acre.”²⁴ The exact amount transferred under this system makes very little difference in this connection; suffice it to say that hundreds of thousands of acres were involved. This was the foundation of bonanza wheat-farming.

Much more common than the above, especially after the crisis was passed, was the policy of offering the land for sale at very reasonable rates, to actual settlers with long-time payment privileges. The policy was to require a small payment, probably one fifth of the selling price, at time of sale, and give several years in which to make final payments.²⁵

There were certain districts²⁶ in which a very large share of the land (nearly one half) belonged to the railroad (St. Paul, Minneapolis and Manitoba, now Great Northern). The settlers on government land had their farms pretty well cultivated and were ready to buy new lands when the railroads offered their large areas for sale. These farmers were not in a position to begin cultivation immediately, however, and that was the very thing which the railroads wished done. The great desire was to induce the farmers to produce more grain and thereby open up this new land. They would sell the land to the farmer for a consideration of \$6 per acre on certain conditions.²⁷ First, the purchaser should “break” at least three forties (120 acres) the first year, before mid-summer, and should “back-set” the same amount before winter (during the proper season). If this were done the railroad company would allow a “rebate” of \$2.50 per acre for every acre (not to exceed 120 out of each 160 in a quarter section) thus prepared. It was further provided that for the coming year the purchaser was to sow this new land to crop, and in turn he was to have a second “rebate” of 50 cents per acre.

In this way the farmer was able to buy land for \$6 an acre

²³ *North Dakota Magazine*, vol. i, p. 30.

²⁴ Pamphlet by J. B. Streeter, p. 14.

²⁵ Conversations with settlers and railroad agents.

²⁶ Special reference might well be made to the district in Polk County, Minn., from Crookston to East Grand Forks.

²⁷ The details of the above system were obtained from conversation with farmers who purchased land under it, and from examination of old receipts retained in some cases by the older settlers among old accounts, etc.

(while that was the local price) and the vendor would pay the cost of "breaking," "back-setting" and "sowing" the crop the first year in the form of discounts or rebates. Many farmers testify to the fact that this was very popular while it lasted and there was considerable competition among farmers to see who would be able to accomplish most.

Resulting from the practices outlined above we find the Red River Valley a district of large farms. After the experience of 1873, the first few large farms were started and many others, not so large, have since developed. A farmer well settled could buy a half section or section of school or railroad land at very reasonable rates and with many years in which to pay. Many took advantage of the opportunity.

Buying and selling land by individuals. During the first few years, before an individual holding land had obtained title, he had a recognized right to the land guaranteed by the national preëmption laws.²⁸ This "right" had a market value, and it is common to hear of a man "holding down a claim" and selling his "right" to it. It was a common thing for a prospective settler to purchase the "relinquishment" as it was called, and in time to get title to the land.

From the earliest days of our national existence the United States has issued warrants for military bounty lands,²⁹ to those whose services were such as conformed to certain requirements. Probably a hundred million acres of the public domain have been transferred to private parties as bounties of some kind. These warrants were made negotiable.³⁰

The regulations and rules of procedure were prescribed by the department in charge, and the warrants were at once marketable instruments of considerable value. Warrants were issued in different denominations, *e. g.*, quarter sections, eighties, forties, etc.³¹ These were of the same nature as Indian scrip, which also was negotiable. Thus it was that, besides "relinquishments," a land seeker might purchase a few "soldiers additional" (as the warrants were popularly called) or he could get Indian scrip, and

²⁸ Donaldson, *Public Domain*.

²⁹ *Ibid.*

³⁰ *Revised Statutes of the United States*, 1874, Sec. 2414.

³¹ Donaldson, *Public Domain*.

settle for his land by turning these in at the land offices in place of money, or he could secure a farm by living on the land.

These opportunities were quickly taken advantage of by prospective settlers, and also by speculators who were able to purchase quite large tracts of land and later open large farms or divide the land into smaller areas and offer them for sale at reasonable rates to actual settlers.³² But relinquishments, soldiers' additional and Indian scrip are things of the past, and railroad and school land plays a less important role than in earlier days.

Aside from the forms above noted a land title is secured by sale and purchase, and where the entire purchase price is not paid in full, the former owner may retain an interest in the land and hold as evidence a mortgage. This mortgage is recorded and a future purchaser must see to it that he does not have to pay twice, for he must purchase subject to other interests.³³

Passing on we come to a more complex form of transfer. The purchaser may pay a certain per cent of the price determined upon and yet not receive the deed. The original owner delivers to the purchaser a contract or bond for a deed. This form of sale is very common in this district. It is common for the purchaser to pay in cash one-third, one-fourth, or one-fifth of the purchase price upon the receipt of the contract, and to make further payments in such amounts and at such times and places as are agreed upon and inserted in the contract. The warranty deed is delivered to the purchaser when the last payment is made, and the contract is then destroyed. These contracts are very much alike throughout the district, but one point of difference may be noted. In some cases the warranty deed is delivered to the purchaser when he has paid two-thirds or three-fourths of the purchase price, and the original owner takes a first mortgage to secure the interest which he retains in the land. These contracts for deeds are so common that printed forms are often used, although in many cases special provisions are written in by the parties interested.³⁴

³² Many early settlers still living in the district took advantage of these opportunities. They would arrive with ox-team and covered wagon and a few necessary implements and food and in a few years be owners of well-equipped farms.

³³ These are the common practices in most districts, are found provided for in our state laws and are very generally understood.

³⁴ A copy of one of the most commonly used contracts reads as follows:

And the said party of the second part hereby covenants and agrees to pay the said party of the first part the sum of in the following manner

These contracts have been in use for many years. Thus we find that as early as 1875, Col. C. A. Morton of Fargo would locate settlers, pay for the land with Northern Pacific preferred stock or soldiers' additional, and, if the settler had no money, would receive back the title to the land and give the settler a bond for a deed.³⁵ From that time to the present this method of transfer has been very popular.

It has been pointed out that the early seventies saw the valley overrun with settlers, and that by 1875 land had taken on an exchange value. The next ten years saw a very rapid growth, and all of the best free land had been taken. Then it was that those who wished land in the valley had to buy it and real estate dealers became more and more necessary as intermediary agents.

..... with interest at the rate of per cent per annum payable annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land, subsequent to the year And in case of failure of said party of the second part to make either of the payments or interest thereon or any part thereof, or perform any of the covenants on part hereby made and entered into, then the whole of said payments and interest shall at the election of said first party become immediately due and payable, and this contract shall at the option of the party of the first part be forfeited and determined, by giving to said second party thirty days' notice in writing of the intention of said first party to cancel and determine this contract, setting forth in said notice the amount due upon said contract, and the time and place, when and where, payment can be made by said second party.

It is mutually understood and agreed by and between the parties to this contract that thirty days is a reasonable and sufficient notice to be so given to said second party, in case of failure to perform any of the covenants on part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of the said first party, and fully reinvest with all right, title and interest hereby agreed to be conveyed, and the party of the second part shall forfeit all payments made by on this contract, and right, title and interest in all buildings, fences or other improvements whatsoever, and such payments and improvements shall be retained by the said party of the first part, in full satisfaction and in liquidation of all damages by sustained, and shall have the right to re-enter and take possession of the premises aforesaid.

In many cases the last provision of the contract varies and a common form is: "and if this agreement shall have been recorded in the office of the Register of Deeds, then the filing of a declaration of forfeiture (setting forth the fact of such failure), in said office by said first party shall be sufficient to cancel all obligations hereunto on the part of the first party and fully reinvest....." etc.

* From address before Old Settlers Association, 1906.

The Morton Land Company was one of the most prominent in the district, and Col. Morton, the head of the company, was well acquainted with the valley, having been interested in it from the time it was thrown open to settlement. From the earliest times he had sold large tracts of land on time to settlers who came without money but willing to work. He knew, as did the people in the district generally, that the land would pay for itself in a few years if carefully farmed, and, therefore, he ran no risk in advancing the use of the land. If the prospective purchaser should leave after the first crop the original owner was not a loser. He could afford to give the first crop for the breaking of the wild land.³⁶

Having the above in mind and well aware that his clients were mostly men with little capital, Col. Morton developed what has come to be known as the crop-payment system of buying lands. Beginning about 1883 he sold many farms under this plan and has continued using it up to the present time, having sold thousands of acres of land. Other agents throughout the district have availed themselves of the form and hundreds of thousands of acres have been sold under it. As the plan has spread from place to place, it has taken on a variety of forms but all are based upon the original—"pay for the land out of the soil itself."

It has been common throughout the country to lease the land on shares, and the tenant pays in most cases one half of the crop as rent. The system of which we speak requires the purchaser to contribute one half of the crop, but this is credited to his account and goes to pay for the land, and is not paid as rent.

The best explanation of the system is given in the originator's words, and the following quotation comes from a letter to a prospective purchaser under the system.³⁷

CROP PAYMENT SYSTEM.

"You can buy either wild land—or land in cultivation upon crop payments, provided you can satisfy us of your ability to properly farm the land you purchase. It may be that you are not acquainted with the crop-payment plan—therefore, we will enlighten you upon the subject—to illustrate: We sell you 320 acres of land for \$12.50

³⁶ The value of the time lost, and the cost of "breaking" and "back-setting," the first year were estimated to be the equivalent of one-half of the crop.

³⁷ Copied from *Morton's Daily Bulletin*, March 8, 1897, p. 2, about fifteen years after its first introduction.

per acre, or \$4,000. We give you a contract of sale—the \$4,000 aforementioned bears interest from date of sale, at the rate of 7 or 8% per annum, as may be agreed upon. Now, the contract provides that you are to pay for the farm from the farm—and that you are not to be called upon to pay otherwise, except at your own pleasure. We require that you turn in one half of the crop annually—and in addition your interest—until the principal sum of \$4,000 and accrued interest is fully paid.

By such an arrangement you can not possibly, except by some act of your own, lose the land. We cannot foreclose the contract, because the provisions of the contract specifically stipulate that you are to make your payments from the product of the land. If you should have a failure of crop, or a partial failure of crop, an experience heretofore unknown in this country, you could not be called upon to pay anything, beyond your interest account. We have sold hundreds of farms upon this plan..... and we have only two deals to regret—and that is where we were imposed upon by worthless parties. As by this plan of sale, we practically furnish the capital, or the bulk of it, for the farmer to do business upon, we are very careful to ascertain the kind of a man that we are dealing with.

In the first place we sell to no one not of unquestioned character and habits. We sell to no one that is not an experienced and competent farmer. We sell to no one that has not an ample equipment to cultivate properly the land he buys, and if he buys new land, he must be in a position to take care of himself until he has time to get returns from the purchase he has made. You understand that in this country the sod is turned over between the first of May and the first of July, then, thirty or sixty days later, it is turned back again, and the following spring the ground is in prime condition for the seed. You cannot break the land and get a crop off of it the same year, except in cases where flax is sown upon the sod, which, we have been told, has worked admirably, although we have had no experience of this kind ourselves. If you have the money to make the usual cash payment of one third of the purchase money, we give you a deed at once, taking back a mortgage for the deferred payments.

P. S. The best possible evidence of the fertility of the land is evidenced by the fact that the owner of the realty is entirely willing to accept as security—that realty alone—for the purchase price.

The general form of this contract has not been greatly changed. Very generally the vendor requires that the 20 or 25 per cent of the purchase price be paid at the beginning as a guarantee of good faith. Mr. J. B. Streeter, Jr., of Larimore, who used the system very largely says, "in selling lands on the crop payment plan, we require 25 per cent of the purchase price down and balance of the land can pay for itself by the purchaser turning in half the crop each year until the land is paid for." This method is so

common in the district that a regular printed form is in general use and poorly educated men often ask for this form to be sure that the vendor or lawyer does not insert something he does not understand.³⁸

Slight changes are made in these contracts by the parties using them, to fit special desires. Thus we often find that after a small cash payment is made "one half or more of the *proceeds*"³⁹ is required to be paid over to the vendor each year and this sum is to be applied first in the payment of interest and second in the reduction of principal sum. A second common change provides that "said second party is to use his own judgment as to the kind and amount of each grain grown." Another clause often found is as follows:

"It is further agreed and understood that when the party of the second part has paid the sum of $1\frac{1}{2}$ ($\frac{3}{4}$ etc.) of the principal sum, the party of the first part will give him a warranty deed and take a first (or second) mortgage on the premises to secure the balance unpaid, at the rate of per cent interest until paid, and the payments of said balance are to be made in the same manner as under this contract."

We have seen under this system that sometimes a specified amount of money was to be paid each year, or half of the proceeds from the crop, or half of the crop itself, but in each of these the value of the land was expressed in terms of money and a set rate of interest was charged.

Much is said in early histories and treatments of industrial development concerning the different commodities which have served as a medium of exchange or a measure of value. It may not be out of place to add "wheat" to the already lengthy list, or at least point out one of the ways in which it served in the capacity named. We have noted that the crop-contracts took on a great variety of forms, and not the least important, although never extensively used, was the one in which the value of the farm was estimated in terms of wheat. All of the important points will best be noted by giving an extract from one of the more common contracts:⁴⁰

³⁸ For copy of the form of contract, see Appendix.

³⁹ The question in most of these cases is, How well does the vendor know the vendee, and how much does he trust him?

⁴⁰ It might be noted that John Birkholz, one of the largest dealers in real estate, loans, mortgages, etc., in the district was the vendor in this particular case.

And the second party agrees to pay to the party of the first part as and for the purchase price of said premises the sum of eighty-five hundred bushels of the best wheat that shall be grown on said premises.

One half of all the grain to be sown and grown on said premises in each and every year hereafter during the continuance of this contract, beginning with the crop for the year ; said one half of grain to be delivered in the elevator or on the cars at or at some other convenient point not more remote, as said first party shall direct, within a reasonable time after threshing the same, and free from all expense or charge to the said first party; said grain to be delivered in the name of the first party, and to be by first party applied in reduction of said principal sum.

The second party further agrees that he will pay all taxes levied or assessed upon said premises, before the same become delinquent, beginning with the taxes for the year that he will properly sow and plant during each and every year of the continuance of this contract, as much of said land as can be profitably sown and planted, and will have in crop during the year , not less than 160 acres of wheat, and during each and every year thereafter while this contract continues in force, not less than 160 acres of wheat, also that during the continuance of this contract he will carefully watch over and protect all buildings, now or hereafter on said premises, and will in all respects farm and cultivate said premises in a careful and husbandlike manner. That should default be made in the delivery of said several payments of grain, or any of them, or any part thereof, as herein agreed, or in any of the covenants herein to be by the party of the second part kept and performed, then this agreement to be void at the election of the party of the first part, time being the essence of this agreement. That in case of default by said second party, in whole or in part of any or either of the covenants of this agreement by him to be kept and performed, he hereby agrees on demand of said first party, to quietly and peaceably surrender possession of the said premises and every part thereof, it being understood and agreed that until such default said party of the second part is to have possession of the premises. That all payments made hereunder whether in cash or grain, in case of the failure of the second party to fulfill the covenants contained herein, shall be forfeited, and are hereby declared to be liquidated damages for such failure, and time shall be and hereby is declared to be the essence of this contract.

It being further understood and agreed, That until the delivery of one half of the grain as aforesaid, during each and every year of this contract, and until the plowing is done for the succeeding years crops the legal title to and ownership and possession of all of said grain raised during each and every year shall be and remain in the first party. That nothing herein contained shall prevent said second party from paying in any year or years more than one half the grain as above stated, and having said extra payments applied upon said debt.

Here, then, we have an entirely new development or form of crop payment, but based upon the old idea that "the lands must pay for themselves." In the contract herein submitted the vendor retains much the same relation to the land as a landlord. He prescribes how the land shall be cultivated, the improvements cared for and how much grain shall be sown. He claims title to the grain until it is sold and he has gotten his one half and applied it to the reduction of the principal sum. Thus, if on the 160 acres the yield were 10 bushels per acre or the total yield 1,600 bushels, the vendor received 800 bushels and subtracted it from the 8,000 bushels (or estimated price of the farm), from year to year until the total amount had been paid.

From the standpoint of the vendee the system is a good one. Each year, all of the grain "turned in" is used to liquidate the debt, none of it being first applied to cancel the interest due, as in all other forms. In the contract cited above, one half or more of the grain raised each year could be applied to reduce the purchase price. In a poor year, if the crop was a total failure, no grain need be paid, no interest fell due, and the total debt did not increase. This, too, is a valuable consideration. In other contracts referred to, the one half applied first to pay the interest and any remaining amount to reduce the debt; and in case the half crop did not suffice to pay the interest, the debt was increased instead of decreased, and thus might, in case of several poor crops, grow into a sum larger than the exchange value of the land.

Another point for the vendee is the fact that he could apply one half or *more* of the crop any year. If, now, he secured means for a living from some other source, he could in two years of good crops pay for a quarter section from the land, at the rates cited in the above contract. Thus one farmer related that he had a crop of nearly 4,000 bushels on a farm which he bought for 8,000 bushels of wheat. He borrowed money to pay running expenses and cost of production, and contributed half of the purchase price.

It would have been a paying proposition to have purchased the remaining wheat necessary and thus paid for the entire farm because the exchange value of wheat was very low that year, while the land, on account of its demonstrated productive capacity, took on an advanced price. Indeed some intelligent farmers attempted to make final settlement in the way described, which strained the relations between the two parties to the action. The

vendor objected, since he had not contracted to accept 8,000 bushels of 40 cent wheat. He was right in his contention that he *could not* demand the full amount when wheat was selling for \$1.00 per bushel and that he *would not* accept any more than he absolutely had to when wheat was a "drug on the market."

The vendor had, in setting his price, compounded the present exchange value of the land, and expressed its value in terms of money or grain, due in the future. He saw that if the land produced an average of 15 bushels per acre it would thus pay for itself in seven years, and estimated ten years as a maximum, or an average payment of 800 bushels per year, which at an average of 75 cents per bushel would amount to \$6,000. At that time the land was selling for approximately \$3,000 for such a quarter section, which compounded at 6 per cent interest would amount to less than the real selling price even in ten years time, and considerably less in seven years time. From the viewpoint of the vendor, therefore, the bargain was a good one, but he would not be making any great profit if the amount were paid at a time when the wheat was at its very lowest price.

The uncertainty of the operation, combined with disagreements between the parties, tended to make this system unpopular as land values went up and it has been used but little for several years in that district, although the writer examined such contracts drawn as late as 1905.

With reference to the whole system of crop payments, whether the value of the land be estimated in terms of dollars or bushels of wheat, and whether it be paid "in proceeds" or "in kind," the basis is the same "pay for the farm out of the land itself." It is a substitute for tenancy. A share of the crop is submitted, not as rent but as a part of the purchase price, after interest has been paid.

In reference to this plan many interviews bring out the same thought. They may all be summed up in the words of James Holes: "The crop-payment plan offers an excellent opportunity for the careful farmer to obtain a home of his own, that should be appreciated by those who have hitherto been giving up half the crop for the use of the land. The half lost to them under the old arrangement will very quickly pay for the land."⁴¹

⁴¹ The best testimony the writer could find was the extensive use made of this method of buying land. Thus, the vendors and vendees agreed in their approval of it.

This system of paying for the farm out of the land itself has been extended far into the northwest and its operation is explained in the following language by one of its strongest exponents in northwestern Canada:

"The tenant may become the owner, letting the land pay for itself on the half crop payment system. Under this plan the tenant pays \$2 an acre down and takes the whole of the first, or sod, crop. One half of succeeding crops is delivered to (the original owner) until their value, together with the original cash payment of \$2 an acre, equals \$25 an acre for the land purchased, with 5 per cent interest upon the deferred payments. If there is no crop in any one year, there is no payment to be made,"

It is to be noticed about this plan that a cash payment of \$2 an acre is charged to start with, and that no part of the first crop is paid in. If the tenant-owner, as he is called, wishes to "move on," he has paid \$2 an acre rent for this year; if he decides to "stay," this \$2 an acre is credited to him as part payment. All necessary equipments with which to begin operations are practically supplied to him, and their cost must be paid for out of the tenant-owner's share of the crops, or out of his first crop. The plan is the Morton system very slightly modified.

JOHN LEE COULTER

Bureau of the Census, Washington.

APPENDIX: CROP CONTRACT FOR SALE OF LAND.

THIS AGREEMENT, Made and entered into this day of A. D. 190.. by and between party of the first part, and party of the second part;

WITNESSETH, That the party of the first part, in consideration of the covenants and agreements of the said party of the second part hereinafter contained, hereby sells and agrees to convey unto the said party of the second part, or his assigns, by good and sufficient Deed or Warranty, on the prompt and full performance by said second party of his part of his agreement, the following described premises, situated in the County of and State of North Dakota, to-wit:

And the second party agrees to pay to the party of the first part as and for the purchase price of said premises the sum of Dollars, with interest on all deferred payments at the rate of per cent per annum, interest payable annually on the day of, and to begin, said payments to be made in the manner and at the time following, to-wit:; also one-half of all the grain to be sown and grown on said premises in each and every year hereafter and during the continuance of this contract, beginning with the crop for the year 190..; said one-half of grain to be delivered in the elevator or in the cars at or at

some other convenient point not more remote, as said first party shall direct, within a reasonable time after threshing the same, and free from all expense or charge to the said first party; and said grain to be delivered in the name of the first party and to be by first party promptly sold and the proceeds thereof applied, first in the payment of interest on said sum at per cent per annum, and second, in reduction of said principal sum

The second party also agrees that he will pay all the taxes levied or assessed upon said premises before the same become delinquent, beginning with the taxes for the year 190..; that he will during the proper season of the year 190.., break and backset in a suitable manner, not less than acres, and during the year 190.. not less than acres, and during the year 190.. not less than acres, of the land herein described, now uncultivated; that he will properly sow and plant during each and every year of the continuance of this contract, as much of said land as can be profitably sown and planted, and will have in crop during the year 190.. not less than acres of wheat, and during the year 190.. not less than acres of wheat;; also that during the continuance of this contract he will carefully watch over and protect all buildings, fences and shade trees, now or hereafter on said premises, and will in all respects farm and cultivate said premises in a careful and husbandlike manner. That should default be made in the delivery of said several payments of grain, or any of them, or any part thereof, as herein agreed, or in any of the covenants to be by the party of the second part kept and performed, then this agreement to be void at the election of the party of the first part, time being the essence of this agreement. That in the case of default by said second party, in whole or in part of any or either of the covenants of this agreement by him to be kept and performed, he hereby agrees on demand of said first party, to quietly and peaceably surrender possession of the said premises and every part thereof, it being understood and agreed that until such default said party of the second part is to have possession of the premises. That all payments made hereunder whether in cash or grain, in case of the failure of the second part to fulfil the covenant contained herein shall be forfeited, and are hereby declared to be liquidated damages for such failure, and time shall be and is hereby declared to be the essence of this contract.

IT BEING FURTHER UNDERSTOOD AND AGREED, That until the delivery of one-half of the grain as aforesaid, during each and every year of this contract, the legal title to and ownership and possession of all of said grain raised during each and every year shall be and remain in the first party. That nothing herein contained shall prevent said second party from paying in any year or years more than one-half of the grain as above stated, and having said extra payments applied upon said debt. That this contract shall not be assignable by said second party without the written consent of the first party.

It is further agreed that any balance remaining unpaid on this contract shall become due and payable on 190.., and such balance shall then be paid full in money.